

WASTE PREVENTION/BENEFICIAL USE

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(6/1/98)

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WASTE PREVENTION/BENEFICIAL USE

REFERENCES/POLICY

Mineral Leasing Act of February 25, 1920, as amended:

Section 16 (30 U.S.C. 225) - "That all permits and leases of lands...containing gas, shall be subject... to the further condition that the permittee or lessee will, in conducting his explorations and mining operations, use all reasonable precautions to prevent waste of oil or gas developed in the land,... Violations of the provisions of this section shall constitute grounds for forfeiture of the permit or lease..."

Section 30 (30 U.S.C. 187) - "...Each lease shall contain provisions for the purpose of insuring the exercise of reasonable diligence, skill, and care in the operation of said property...a provision that such rules...for the prevention of undue waste as may prescribed by said Secretary shall be observed..."

Section 31 (30 U.S.C. 188(a) Forfeiture) - "Except as otherwise herein provided, any lease issued under the provision of this Act may be forfeited and canceled by the district in which the property, or some part thereof, is located whenever the lessee fails to comply with any of the provision of this Act, of the lease, or of the general regulations promulgated under this Act and in force at the date of the lease; and the lease may provide for resort to appropriate methods for the settlement of disputes or for remedies for breach of specified conditions thereof..."

Section 32 (30 U.S.C. 189) - "That the Secretary of the Interior is authorized to prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of this Act,..."

Secretarial Order No. 482, January 20, 1931

"Section 1. Powers and Duties of Supervisor. It shall be the duty of the supervisor directly or through his representatives -
...(h)...to estimate the amount and value of natural gas wasted. The supervisor shall order payment to the United States by means of a statement rendered monthly to each lessee...showing for his lease...except as to any disposal of natural gas that shall have been determined by the Secretary of the Interior to be sanctioned by the laws of the United states and of the State in which it occurs, the amount and **full value** computed at a price of not less than 5 cents per 1,000 cubic feet of all natural gas wasted by blowing, release, or escape into the air, otherwise..."

This 1931 policy of assessing full value for gas determined to have been wasted remained in effect until October of 1984.

43 CFR 3162.7-1(d)

The operator shall conduct operations in such a manner as to prevent avoidable loss of oil and gas. A operator shall be liable for royalty payments on oil or gas lost or wasted from a lease site, or allocated to a lease site, when such loss or waste is due to negligence on the part of the operator of such lease, or due to the failure of the operator to comply with any regulations, order or citation issued pursuant to this part.

43 CFR 3160.0-5(b)

Avoidably lost means the venting or flaring of produced gas without the prior authorization, approval, ratification or acceptance of the authorized officer and the loss of produced oil or gas when the authorized officer determines what such loss occurred as a result of: (1) Negligence or the part of the operator; or (2) The failure of the operator to take all reasonable measures to prevent and/or control the loss; or (3) The failure of the operator to comply fully with the applicable lease terms and regulations, applicable orders and notices, or the written orders of the authorized officer; or (4) Any combination of the foregoing.

43 CFR 3160.0-5(w)

Waste of oil or gas means any act or failure to act by the operator that is not sanctioned by the authorized officer as necessary for proper development and production and which results in: (1) A reduction in the quantity or quality of oil and gas ultimately producible from a reservoir under prudent and proper operations; or (2) avoidable surface loss of oil or gas.

30 CFR 202.100(b)(1), Royalty on oil.

All oil (except oil unavoidably lost or used on, or for the benefit of, the lease, including that oil use off-lease for the benefit of the lease when such off-lease use is permitted by the MMS or BLM, as appropriate) produced from a Federal or Indian lease to which this part applies is subject to royalty.

30 CFR 202.150(b)(1), Royalty on gas.

All gas (except gas unavoidably lost or used on, or for the benefit of, the lease, including that gas use off-lease for the benefit of the lease when such off-lease use is permitted by the MMS or BLM, as appropriate) produced from a Federal or Indian lease to which this part applies is subject to royalty.

NTL-4A (Effective January 1, 1980)

Superseded NTL-4 (effective December 1, 1974) which was the first official document to prescribe that gas which was vented or flared without prior approval would be subject to full value compensation. NTL-4A

describes when oil and gas production will be subject to a royalty obligation, and outlines instances where no royalty obligation shall accrue.

Describes when operators are authorized to vent or flare gas on a short-term basis without incurring a royalty obligation. No royalty obligation due on oil and gas when used for beneficial purposes or when oil and gas is determined to be unavoidably lost. NTL-4A defines the terms "avoidably lost", "beneficial purposes", and "unavoidably lost". The U.S.G.S. Conservation Division Manual (CDM 644.5), Release No. 68, June 23, 1980, provided guidelines and procedures for implementing the requirements of NTL-4A.

BLM WO IM No. 87-652, Policy for Avoidably Lost Gas - Onshore Federal and Indian Oil and Gas Leases (August 17, 1987)

Superseded all prior WO policy on avoidably lost gas. If avoidably lost gas occurred, assess full value prior to October 21, 1984, and royalty value thereafter. Required operator have a 60-day period to submit data in support of its position that gas was uneconomic to be captured, both at the time of application and as of the expiration date of the initial authorized test period. For wells completed on or after January 1, 1980, no avoidable loss occurred and no assessment shall result if (1) the gas was captured immediately following expiration of the initial authorized test period (i.e. 30 days or 50 MMcf, which first occurs), (2) an application to continue venting/flaring is received before the expiration of the test period, and (3) a plan was submitted before the expiration of the test period to eliminate venting/flaring within one year of the plan's submittal date.

Information Notice (IN) No. 89-2 (Wyoming) (Effective December 9, 1989)

Beneficial Use of Oil or Gas on Lease. Clarifies the term "beneficial use" for oil and gas. Oil and gas may only be used royalty free on the same lease, communitization agreement (CA), or participating area (PA) from which it was produced.

Information Notice (IN) No. 91-1, Change 2 (Effective May 4, 1992)

Replaces IN No. 91-1. Clarified Wyoming policy regarding beneficial use and who is entitled to lease benefits. Determined that a third party contractor on a leasehold shall be considered the agent of the lessee/operator, and is also entitled to lease benefits as long as the contractor is providing a service which is ordinarily the responsibility of the lessee/operator and as long as the benefits comply with NTL-4A

definitions.

BLM WO IM No. 90-474, Bureau's Oil and Gas Production Accountability Responsibilities (May 11, 1990)

Affirm BLM policy that BLM's responsibility for the proper accounting for production from onshore jurisdictional leases is on the leasehold (except where off-lease measurement is approved). Also stated that under no circumstances does BLM's responsibilities go past the inlet meter of any gas processing plant whether measured on or off-lease.

BLM Wyoming IM No. WY-91-124 (December 28, 1990)

Provided additional Wyoming policy guidance regarding lost gas determinations. Stated it was mandatory that BLM allow the operator 60 days in which to submit data explaining why gas was flared/vented in excess of what is authorized under NTL-4A and without approval. Provided discussion on when gas becomes economic to market, full value compensation versus royalty value compensation, statute of limitations, and the situation of venting gas for the prevention of drainage and the protection of correlative rights.

BLM Wyoming IM No. 92-140 (February 19, 1992)

This IM distributed WO IM No. 92-91, Policy for Avoidably Lost Gas. **WO IM No. 92-91 was written to update the procedures contained in WO IM No. 87-652** and to adopt the IBLA's decision in an appeal filed by Mobil (119 IBLA 76, dated April 5, 1991). Basically, the policy explained that the operator will only be assessed **royalty value** compensation for gas determined to be avoidably lost, even before October 22, 1984. However, IM No. WY-92-140 clarified policy to indicate that we would not attempt to assess compensation for gas vented/flared prior to April 1, 1980. It also pointed out that if an operator is venting/flaring gas without approval and it is determined the gas is economic to market, an avoidable loss has occurred. When the operator is notified of the decision, we should advise the operator that if the gas is not being captured within 60 days of receipt of your notice, **full value** compensation will be assessed thereafter and until the gas is eventually captured or until the gas becomes uneconomic to capture.

BLM WO No. 96-187, Gas Production Accountability Responsibilities (September 20, 1996)

Revised BLM's policy on the limit of regulatory jurisdiction for gas production accountability in specific situations. Anytime Federal or Indian

gas production from a lease, CA, or unit area cannot be measured accurately prior to processing, the BLM can approve measurement at the tailgate of a gas processing plant.

RELATED DECISIONS/DOCUMENTS ON FLARING/VENTING, BENEFICIAL USE, AVOIDABLY LOST GAS

139 IBLA 244 (July 2, 1997)

BLM Utah denied an request for a determination that the use of gas to fuel an off-lease, third-party compressor should be royalty free due to beneficial use. The applicant relied partly on a BLM Wyoming policy (IN No. 91-1, Change 2) that allowed for a royalty free determination in this instance. Although IBLA agreed the Utah case was similar to Wyoming policy, IBLA ruled that the Wyoming policy does not bind to Utah's jurisdiction. The appellant acknowledged that they did not seek prior approval of off-lease measurement or dispute that the gas production was measured on the leases. BLM Utah relied on WO IM No. 90-474, which specifies that BLM's gas production accounting responsibility ends once the production is last measured before leaving the leasehold (as it was in this case). IBLA determined that BLM Utah properly declined approval responsibility for the request by the applicant since BLM's determination of royalty-free use of production ceases where the gas was last measured on the lease (the authority for production-related decision then transfers to MMS).

135 IBLA 112 (March 25, 1996)

MMS denied applicant's request for a refund for royalties for gas flared on Federal oil and gas leases, because applicant did not qualify for a refund of royalties pursuant to NTL-4A. NTL-4A replaced provisions of NTL-4 which had changed the long-standing Departmental policy that a royalty would not be assessed for oil or gas that is unavoidably lost or used in lease operations. NTL-4A did not alter Departmental policy that the government should be compensated for gas that was vented or flared without prior approval of the Supervisor or avoidably lost. Applicant asserted that gas flared between December 1, 1974 (effective date of NTL-4) and January 1, 1980 (effective date of NTL-4A) must be retroactively exempt from royalties because NTL-4A retroactively authorized flaring during that period. IBLA ruled that NTL-4A provided for a refund of royalties during that time frame if the gas was vented or flared with the prior approval of the Supervisor or was unavoidably lost. In this case, the applicant did not show that prior approval had been given or that the gas had been unavoidably lost.

124 IBLA 111 (September 21, 1992)

BLM Wyoming decision that assumed all gas wells connected to a (gas) plant were connected because the production rates from the Federal leases and distance to an existing pipeline were economically favorable. BLM decided that the gas flared or vented (without prior approval in accordance with WO IM No. 87-652) was avoidably lost. The appellant argued that it is not correct to assume a well is economic just because it is connected to a pipeline, and in this case, it was the pipeline company's decision to connect the gas to a pipeline. It was determined that BLM needs to specify in detail what facts it needs (production rates, prices, distance to existing pipelines, etc.) to determine in accordance with WO IM No. 92-91 whether the gas was avoidably lost. This case was remanded back to BLM to gather the specific information and make a decision (the record was inadequate for BLM to determine whether it was uneconomic to capture the gas).

123 IBLA 321 (July 9, 1992)

BLM New Mexico ruled that gas was avoidably lost from gas that escaped from a well. The well experienced a blowout and that gas was vented to atmosphere later as a result, although there was a blowout preventer in place on the well at the time the gas erupted. BLM determined the operator should be assessed royalty on the gas that was lost by flaring after the blowout had been brought under effective control. BLM contended that the operator failed to pressure test the casing as required by the workover permit and that this failure was the cause of the loss (BLM felt this prevented the operator from taking reasonable available measures (i.e. use of blowout preventers) to control the loss of gas to the atmosphere). IBLA determined that the deviation from the workover permit (i.e. no pressure test of the casing) was a contributing factor to the loss of gas. The operator was found not to have taken all reasonable measures to prevent such loss of gas.

122 IBLA 190 (February 10, 1992)

BLM Wyoming assessed the operator for gas avoidably lost for five Federal leases. The operator argued that based upon the significant volume of oil and gas being produced from a directly adjacent non-Federal well, it was decided to produce the Federal well and vent gas for a short period of time (pending pipeline connection), in order to prevent drainage and protect correlative rights. The operator contended that the lost revenue from the vented gas was insignificant compared to the revenue generated from the oil produced. BLM determined that in only one case was the non-Federal well actually draining oil/gas from the Federal lease. NTL-4A and WO IM No. 87-652 did not specifically allow an

operator to vent gas in order to prevent drainage. IBLA ruled on the one case that the economics of the entire lease must be considered (more revenue would have been lost if the subject lease had been drained rather than shut-in until the pipeline connection). IBLA upheld the other four assessments. This decision brought about BLM Wyoming policy to approve the venting/flaring of economic gas in order to prevent drainage and protect correlative rights, only if the value of the oil/gas subject to drainage is greater than the value of the vented gas.

119 IBLA 76 (April 5, 1991)

BLM Wyoming decision that was reversed in part on appeal finding that the 1984 regulation (43 CFR 3162.71(d)) that changed Departmental policy on compensation for avoidably lost gas shall be limited to payment of the royalty value of the gas so vented, could be applied retroactively in this case where BLM had assessed vented gas at full value from April 1, 1980 to October 21, 1984. The gas had been flared without authorization due to compressor failure. In other words, affected leases (those previously subject to full value royalty compensation) would be able to benefit from the amended rule and be subject to royalty value, not full value, compensation for lost gas.

116 IBLA 384 (November 8, 1990)

BLM Utah informed an operator that his lease had randomly been selected for an inspection. One of the results of the inspection indicated that unapproved venting of natural gas from June 1975 through December 1987 had occurred in violation of NTL-4A. The operator argued that the gas was uneconomic to be recovered through the gathering system. IBLA noted that Wo IM No. 87-652 changed the interpretation of NTL-4A, by stating that a lessee must be given written notice by certified mail and an opportunity to show the gas was not marketable before he can properly be held liable for royalty for flaring gas. Also under the IM, the gas might not properly be deemed to be avoidably lost if the lessee showed, even after the fact, that it was uneconomic to sell the flared gas as of the time that it was flared. IM No. 87-652, which applied to both past and future determinations of avoidably lost gas, changed the assessment for lost gas from full value to royalty value compensation on and after October 21, 1984. Consequently, IBLA deemed it appropriate to vacate BLM's determination and remand the matter to BLM for further consideration under the new policy in IM No. 87-652.

107 IBLA 5 (January 24, 1989)

BLM Montana case where the operator was flaring gas without authorization since the well was completed in June 1981. In 1984, the operator filed an application requesting formal approval to flare the gas and contend gas produced from the oil well could not be marketed because of the small volume of gas. BLM

Montana concluded that since the gas was avoidably lost due to flaring without authorization, and full value compensation would be charged for gas flared prior to October 1, 1984. IBLA set aside BLM's determination that the gas was avoidably lost and the case remanded for BLM to consider whether it was uneconomic to capture the gas at that time consistent with the guidelines announced in WO IM No. 87-652 (which came out while this particular case was under appeal).

APPENDIX

Policy/Guidance

1. BLM Wyoming IM No. WY-92-140 (includes WO IM No. 92-91)
2. BLM Wyoming IM No. WY-91-124
3. WO IM No. 87-652
4. NTL-4A
5. BLM Wyoming Information Notice (IN) No. 91-1, Change 2
6. BLM Wyoming Information Notice (IN) No. 89-2
7. WO IM No. 96-187
8. WO IM No. 90-474

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Miscellaneous

Wyoming Oil and Gas Conservation Commission (WOGCC) Rules of Practice and Procedures, Section 40, **Authorization for Flaring and Venting of Gas**